

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

SYMBOLITY INNOVATIONS, LLC,

Plaintiff,

v.

MICHAELS STORES, INC.,

Defendant.

Civil Action No.: 1:21-cv-00412-RP

TRIAL BY JURY DEMANDED

**PLAINTIFF SYMBOLITY INNOVATIONS, LLC'S ANSWER TO DEFENDANT
MICHAELS STORES, INC.'S COUNTERCLAIMS**

Now comes Plaintiff and Counter Defendant, Symbolity Innovations, LLC (“Plaintiff” or “Counterclaim Defendant”), by and through undersigned counsel, pursuant to Federal Rules of Civil Procedure 12, without admission of the legal sufficiency thereof and responding only to the factual allegations therein, and states as follows for its Answer and Defenses to Defendant and Counterclaim Plaintiff Michaels Stores, Inc.’s (“Defendant” or “Counterclaim Plaintiff”) Counterclaims (D.E. 31) (hereafter the “Counterclaims”) as follows:

PARTIES

1. Counterclaim Defendant admits the allegations contained in Paragraph 1 of Counterclaim Plaintiff’s Counterclaims.
2. Counterclaim Defendant admits the allegations contained in Paragraph 2 of Counterclaim Plaintiff’s Counterclaims.

JURISDICTION

3. Counterclaim Defendant incorporates by reference each of its answers in paragraphs 1-2 above.
4. Counterclaim Defendant admits the allegations contained in Paragraph 4 of

Counterclaim Plaintiff's Counterclaims.

5. Counterclaim Defendant admits the allegations contained in Paragraph 5 of Counterclaim Plaintiff's Counterclaims.

6. Counterclaim Defendant admits that venue is proper but denies that it is not convenient as contained in Paragraph 6 of Counterclaim Plaintiff's Counterclaims.

FIRST COUNTERCLAIM

7. Counterclaim Defendant incorporates by reference each of its answers in paragraphs 1-6 above and denies any allegations that may have been levied in any preceding Counterclaim heading.

8. Counterclaim Defendant admits the allegations contained in Paragraph 8 of Counterclaim Plaintiff's Counterclaims.

9. The allegations in Paragraph 9 are bare legal conclusions, to which no answer is required. To the extent an answer is required, Counterclaim Defendant denies the allegations contained in Paragraph 9 of Counterclaim Plaintiff's Counterclaims.

10. The allegations contained in Paragraph 10 are bare legal conclusions, to which no answer is required. To the extent an answer is required, Counterclaim Defendant denies the allegations contained in Paragraph 10 of Counterclaim Plaintiff's Counterclaims and further denies that Counterclaim Plaintiff is entitled to any relief.

SECOND COUNTERCLAIM

11. Counterclaim Defendant incorporates by reference each of its answers in paragraphs 1-10 above and denies any allegations that may have been levied in any preceding Counterclaim heading.

12. Counterclaim Defendant admits the allegations contained in Paragraph 12 of Counterclaim Plaintiff's Counterclaims.

13. The allegations in Paragraph 13 are bare legal conclusions, to which no answer is required. To the extent an answer is required, Counterclaim Defendant denies the allegations contained in Paragraph 13 of Counterclaim Plaintiff's Counterclaims.

14. The allegations contained in Paragraph 14 are bare legal conclusions, to which no answer is required. To the extent an answer is required, Counterclaim Defendant denies the allegations contained in Paragraph 14 of Counterclaim Plaintiff's Counterclaims and further denies that Counterclaim Plaintiff is entitled to any relief.

THIRD COUNTERCLAIM

15. Counterclaim Defendant incorporates by reference each of its answers in paragraphs 1-14 above and denies any allegations that may have been levied in any preceding Counterclaim heading.

16. Counterclaim Defendant admits the allegations contained in Paragraph 16 of Counterclaim Plaintiff's Counterclaims.

17. The allegations in Paragraph 17 are bare legal conclusions, to which no answer is required. To the extent an answer is required, Counterclaim Defendant denies the allegations contained in Paragraph 17 of Counterclaim Plaintiff's Counterclaims.

18. The allegations in Paragraph 18 are bare legal conclusions, to which no answer is required. To the extent an answer is required, Counterclaim Defendant denies the allegations contained in Paragraph 18 of Counterclaim Plaintiff's Counterclaims.

19. The allegations contained in Paragraph 19 are bare legal conclusions, to which no answer is required. To the extent an answer is required, Counterclaim Defendant denies the

allegations contained in Paragraph 19 of Counterclaim Plaintiff's Counterclaims and further denies that Counterclaim Plaintiff is entitled to any relief.

20. Counterclaim Defendant states that Exhibit A speaks for itself and therefore denies any other allegations contained in Paragraph 20 of Counterclaim Plaintiff's Counterclaims.

21. Counterclaim Defendant states that Exhibit B speaks for itself and therefore denies any other allegations contained in Paragraph 21 of Counterclaim Plaintiff's Counterclaims.

22. Counterclaim Defendant admits that Mr. Rothschilds's involvement with barcode technology dates back almost two decades and that in the late 1990s and 2000s Mr. Rothschild started a few businesses, including BarPoint.com. Counterclaim Defendant denies the remaining allegations contained in Paragraph 22 of Counterclaim Plaintiff's Counterclaims.

23. Counterclaim Defendant states that Exhibit C speaks for itself and therefore denies any other allegations contained in Paragraph 23 of Counterclaim Plaintiff's Counterclaims.

24. Counterclaim Defendant admits the allegations contained in Paragraph 24 of Counterclaim Plaintiff's Counterclaims.

25. Counterclaim Defendant states that Exhibit D speaks for itself and therefore denies any other allegations contained in Paragraph 25 of Counterclaim Plaintiff's Counterclaims.

26. Counterclaim Defendant denies the allegations contained in Paragraph 26 of Counterclaim Plaintiff's Counterclaims.

27. The allegations in Paragraph 27 are bare legal conclusions, to which no answer is required. To the extent an answer is required, Counterclaim Defendant denies the allegations contained in Paragraph 27 of Counterclaim Plaintiff's Counterclaims.

28. Counterclaim Defendant admits the allegations contained in Paragraph 28 of Counterclaim Plaintiff's Counterclaims.

29. Counterclaim Defendant admits the allegations contained in Paragraph 29 of Counterclaim Plaintiff's Counterclaims.

30. Counterclaim Defendant states that Exhibit F speaks for itself and therefore denies any other allegations contained in Paragraph 30 of Counterclaim Plaintiff's Counterclaims.

31. The allegations in Paragraph 31 are bare legal conclusions, to which no answer is required. To the extent an answer is required, Counterclaim Defendant denies the allegations contained in Paragraph 31 of Counterclaim Plaintiff's Counterclaims.

32. Counterclaim Defendant admits the allegations contained in Paragraph 32 of Counterclaim Plaintiff's Counterclaims.

33. Counterclaim Defendant admits the allegations contained in Paragraph 33 of Counterclaim Plaintiff's Counterclaims.

34. Counterclaim Defendant admits the allegations contained in Paragraph 34 of Counterclaim Plaintiff's Counterclaims.

35. Counterclaim Defendant states that Exhibits E, J and K speak for themselves and therefore denies any other allegations contained in Paragraph 35 of Counterclaim Plaintiff's Counterclaims.

36. Counterclaim Defendant admits the allegations contained in Paragraph 36 of Counterclaim Plaintiff's Counterclaims.

37. Counterclaim Defendant denies the allegations contained in Paragraph 37 of Counterclaim Plaintiff's Counterclaims.

38. Counterclaim Defendant states that Exhibits M and N speak for themselves and therefore denies any other allegations contained in Paragraph 38 of Counterclaim Plaintiff's Counterclaims.

39. Counterclaim Defendant denies the allegations contained in Paragraph 39 of Counterclaim Plaintiff's Counterclaims.

40. The allegations in Paragraph 40 are bare legal conclusions, to which no answer is required. To the extent an answer is required, Counterclaim Defendant denies the allegations contained in Paragraph 40 of Counterclaim Plaintiff's Counterclaims.

41. The allegations in Paragraph 41 are bare legal conclusions, to which no answer is required. To the extent an answer is required, Counterclaim Defendant denies the allegations contained in Paragraph 41 of Counterclaim Plaintiff's Counterclaims.

42. The allegations in Paragraph 42 are bare legal conclusions, to which no answer is required. To the extent an answer is required, Counterclaim Defendant denies the allegations contained in Paragraph 42 of Counterclaim Plaintiff's Counterclaims.

43. The allegations in Paragraph 43 are bare legal conclusions, to which no answer is required. To the extent an answer is required, Counterclaim Defendant denies the allegations contained in Paragraph 43 of Counterclaim Plaintiff's Counterclaims.

44. Counterclaim Defendant denies the allegations contained in Paragraph 44 of Counterclaim Plaintiff's Counterclaims.

45. Counterclaim Defendant denies the allegations contained in Paragraph 45 of Counterclaim Plaintiff's Counterclaims.

46. Counterclaim Defendant states that Exhibit O speaks for itself and therefore denies any other allegations contained in Paragraph 46 of Counterclaim Plaintiff's Counterclaims.

47. Counterclaim Defendant is without knowledge of third party activities and therefore denies the allegations contained in Paragraph 47 of Counterclaim Plaintiff's Counterclaims.

48. Counterclaim Defendant states that Exhibit P speaks for itself and therefore denies any other allegations contained in Paragraph 48 of Counterclaim Plaintiff's Counterclaims.

49. Counterclaim Defendant denies the allegations contained in Paragraph 49 of Counterclaim Plaintiff's Counterclaims.

50. Counterclaim Defendant denies the allegations contained in Paragraph 50 of Counterclaim Plaintiff's Counterclaims.

51. Counterclaim Defendant admits the allegations contained in Paragraph 51 of Counterclaim Plaintiff's Counterclaims.

52. The allegations in Paragraph 52 are bare legal conclusions, to which no answer is required. To the extent an answer is required, Counterclaim Defendant denies the allegations contained in Paragraph 52 of Counterclaim Plaintiff's Counterclaims.

53. Counterclaim Defendant admits the allegations contained in Paragraph 53 of Counterclaim Plaintiff's Counterclaims.

54. Counterclaim Defendant admits the allegations contained in Paragraph 54 of Counterclaim Plaintiff's Counterclaims.

55. Counterclaim Defendant denies the allegations contained in Paragraph 55 of Counterclaim Plaintiff's Counterclaims.

56. Counterclaim Defendant denies the allegations contained in Paragraph 56 of Counterclaim Plaintiff's Counterclaims.

57. Counterclaim Defendant states that Exhibit R speaks for itself and therefore denies any other allegations contained in Paragraph 57 of Counterclaim Plaintiff's Counterclaims.

58. Counterclaim Defendant states that Exhibit S speaks for itself and therefore denies any other allegations contained in Paragraph 58 of Counterclaim Plaintiff's Counterclaims.

59. Counterclaim Defendant states that Exhibit T speaks for itself and therefore denies any other allegations contained in Paragraph 59 of Counterclaim Plaintiff's Counterclaims.

60. Counterclaim Defendant states that Exhibit T speaks for itself and therefore denies any other allegations contained in Paragraph 60 of Counterclaim Plaintiff's Counterclaims.

61. Counterclaim Defendant admits the allegations contained in Paragraph 61 of Counterclaim Plaintiff's Counterclaims.

62. Counterclaim Defendant denies the allegations contained in Paragraph 62 of Counterclaim Plaintiff's Counterclaims.

63. The allegations in Paragraph 63 are bare legal conclusions, to which no answer is required. To the extent an answer is required, Counterclaim Defendant denies the allegations contained in Paragraph 63 of Counterclaim Plaintiff's Counterclaims.

64. The allegations in Paragraph 64 are bare legal conclusions, to which no answer is required. To the extent an answer is required, Counterclaim Defendant denies the allegations contained in Paragraph 64 of Counterclaim Plaintiff's Counterclaims.

65. The allegations in Paragraph 65 are bare legal conclusions, to which no answer is required. To the extent an answer is required, Counterclaim Defendant denies the allegations contained in Paragraph 65 of Counterclaim Plaintiff's Counterclaims.

66. The allegations in Paragraph 66 are bare legal conclusions, to which no answer is required. To the extent an answer is required, Counterclaim Defendant denies the allegations contained in Paragraph 66 of Counterclaim Plaintiff's Counterclaims.

**DEFENDANT/COUNTERCLAIM PLAINTIFF'S REQUEST
FOR RELIEF**

Counterclaim Defendant denies that Counterclaim Plaintiff is entitled to any relief from Counterclaim Defendant and denies all the allegations set forth in Paragraphs a-h in the Prayer for Relief provided in Counterclaim Plaintiff's Counterclaims.

AFFIRMATIVE DEFENSES

Counterclaim Defendant's Affirmative Defenses to Counterclaim Plaintiff's Counterclaims are listed below. Counterclaim Defendant reserves the right to supplement its Affirmative Defenses.

FIRST AFFIRMATIVE DEFENSE

Counterclaim Plaintiff directly infringes, indirectly infringes, contributes to infringement or induces infringement of at least one of the valid and enforceable claims of the Patents-in-Suit, either literally or under the doctrine of equivalents. Because this action is in its early stages and discovery has not yet commenced, Counterclaim Defendant reserves the right to modify, supplement, amend and expand its affirmative defenses as more information becomes available.

SECOND AFFIRMATIVE DEFENSE

The asserted claims of the Patents-in-Suit are valid. Because this action is in its early stages and discovery has not yet commenced, Counterclaim Defendant reserves the right to modify, supplement, amend and expand its affirmative defenses as more information becomes available.

RELIEF REQUESTED IN RESPONSE TO COUNTERCLAIMS

WHEREFORE, having fully responded to the allegations contained in Defendant and Counterclaim Plaintiff's Counterclaims, Plaintiff and Counterclaim Defendant prays for the following:

- (a) That the Counterclaims be dismissed with costs;

- (b) That Plaintiff be granted the relief requested in its Complaint; and
- (c) For such other and further relief as the Court may determine to be just and proper.

Dated: August 3, 2021

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy has been electronically filed using the CM/ECF filing system, which automatically sends email notifications to all counsel of record and which will permit viewing and downloading of same from the CM/ECF system on August 3, 2021.

/s/ Andrew S. Curfman
Andrew S. Curfman